UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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DANIEL GARZA, JOSHUA RUIZ, ELISABETH CROUCHLEY, STEVEN PASSAL, RUSSELL VREELAND, ANTHONY PIRES, JOHN RUFFNER, and JENNIFER LORET DE MOLA, on behalf of themselves and a class of similarly situated persons,

Plaintiffs,

v.

CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, DANIEL HAHN, and DOES 1 to 225,

Defendants.

No. 2:20-cv-01229 WBS JDP

ORDER RE PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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Plaintiffs Daniel Garza, Joshua Ruiz, Elisabeth Crouchley, Steven Passal, Russell Vreeland, Anthony Pires, John Ruffner, and Jennifer Loret de Mola ("plaintiffs") brought this putative class action against defendants City of Sacramento (the "City"), Sacramento Police Department, Daniel Hahn, and Does 1-225 (collectively, "defendants") alleging violations of

constitutional, statutory, and common law rights based on Sacramento police and other law enforcement officers' use of "less-lethal" impact weapons against them during protests on May 30 and 31, 2020. (See First Am. Compl. ("FAC") (Docket No. 4).) Specifically, in the operative complaint, plaintiffs assert both individual and class-wide claims for (1) excessive force under the Fourth Amendment to the United States Constitution; (2) excessive force under the Fourteenth Amendment to the United States Constitution; (3) retaliation under the First Amendment to the United States Constitution; (4) violation of equal protection under the Fourteenth Amendment to the United States Constitution, (5) violation of the Rehabilitation Act, 29 U.S.C. § 701, et seq.; (6) violation of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; (7) excessive force under Article I, Section 13 of the California Constitution; (8) excessive force under Article I, Section 7(a) of the California Constitution; (9) retaliation under the California Constitution; (10) violation of equal protection under the California Constitution; (11) violation of the Tom Bane Act, Cal. Civ. Code § 52.1; (12) assault and battery; (13) intentional infliction of emotional distress; and (14) negligence. (Id. at ¶¶ 194-296.)

Plaintiffs now move for certification of a class defined as:

> All persons present on May 30, 2020, and May 31, 2020, at the demonstrations in downtown Sacramento, who were injured by less-lethal impact weapons, referred to as "beanbag rounds," "baton rounds," or "rubber bullets," fired by Sacramento Police Department's officers and/or mutual aid partners.

(Mot. at 10 (Docket No. 13-1).)

I. Factual and Procedural Background[1]

On May 26, 2020, a white Minneapolis police officer killed George Floyd, a black man, sparking nationwide protests. (FAC at ¶¶ 21, 23-24.) These included protests that occurred in Sacramento on May 30 and May 31, 2020. (Id. at ¶¶ 26-164.) Plaintiffs were each present at these protests at varying times, at varying locations in the city, and in varying capacities -- as protesters, as legal observers, or as bystanders. (See id.) For example, plaintiff Garza was present on May 30, acting as a legal observer, and travelled from I Street and 7th Street to 21st Street, and plaintiff Ruiz was present on May 31 while "attending a demonstration occurring in downtown Sacramento near Capitol Avenue and L street." (Id. at ¶¶ 26-44, 79.) Multiple plaintiffs were present in "the early hours of May 31, 2020 . . . in downtown Sacramento" on J street between 13th Street and 21st Street, while "attending a demonstration," while "present at a demonstration," while "observing a demonstration," or while "present near a demonstration." (Id. at ¶¶ 90, 103, 113, 118, 136, 153.)

At varying points while at or near the protests, plaintiffs were each struck at least once by a projectile weapon fired by Sacramento police officers. Plaintiff Garza was shot by Defendant Doe 2 at approximately 2100 J Street, after observing that another person had thrown an object toward the police line that had formed there, and was shot again by one or more of Defendants Doe 1 through 25 while he was seeking medical

[1] All facts recited herein are as alleged in the First Amended Complaint.

attention in a nearby parking lot. (Id. at ¶¶ 45-55, 62-70.) He sustained a concussion from having been shot in the head, continues to experience pain and swelling in the part of his face where he was shot, and has since experienced difficulties with his memory and cognition. (Id. at ¶¶ 58, 77-78)

Plaintiff Ruiz was shot multiple times by one or more of Defendants Doe 26 through 50 near Capitol Avenue and L Street, after those defendants "began indiscriminately to fire their weapons into the crowd of protestors." (Id. at ¶¶ 79-84.) He sustained several cuts and bruises, as well as lacerations to his liver from the impact of defendants' weapons, and continues to experience pain from his injuries. (Id. at ¶¶ 87-88.)

Plaintiff Crouchley was shot six times from behind by one or more of Defendants Doe 51 through 75 near 20th Street and J Street. (Id. at ¶¶ 90-97.) She was struck while running away from officers who had begun shooting at other protestors, with her hands above her head, after she saw that others had been shot. (Id. at ¶¶ 93-97.) She sustained a laceration to the back of her head, requiring two staples to close the wound, as well as severe bruising. (Id. at ¶¶ 99, 101.)

Plaintiff Passal was not involved in a demonstration but rather was merely observing one, near 21st Street and J Street. (Id. at ¶¶ 103, 106.) While watching a standoff between demonstrators and Defendants Doe 76 through 100 there, he was shot three times from behind by these defendants, after they had "forcibly moved demonstrators." (Id. at ¶¶ 104-09.) He has since experienced headaches, back problems, and trouble sleeping. (Id. at ¶ 111.)

Plaintiff Vreeland was shot once in the abdomen by one of Defendants Doe 101 through 125 near 21st Street and J Street. (Id. at ¶¶ 113-15.) He sustained bruises, suffered a hematoma lasting several weeks, and continues to experience pain, anxiety, and insomnia from the experience. (Id. at ¶¶ 116-17.)

Plaintiff Pires was shot multiple times by one or more of Defendants Doe 126 through 150 near 13th Street and J Street, while he was standing "off to the side of the demonstration" and filming officers, after officers ordered demonstrators to disperse and began advancing toward them. (Id. at ¶¶ 118-32.) He sustained bruises, continues to experience pain from his injuries, and now experiences anxiety among crowds. (Id. at ¶¶ 134-35.)

Plaintiff Ruffner was shot multiple times by one or more of Defendants Doe 151 through 175 near 15th Street and J Street while helping a demonstrator who was being shot while on the ground, after Ruffner gestured to officers to indicate he intended to move the demonstrator out of harm's way. (Id. at ¶¶ 136-145.) These defendants continued to shoot at him as other demonstrators dragged him away. (Id. at ¶ 145.) He was initially unable to walk and sustained bruising. (Id. at ¶¶ 146-47, 151.)

Plaintiff Loret de Mola was shot once by Defendant Doe 176 near 15th Street and J Street. (Id. at ¶¶ 153, 159.) While participating in a demonstration and holding her hands up, her mask fell off of her face, prompting Doe 176 to demand she put it back on. (Id. at ¶¶ 154-57.) When she did, Doe 176 shot her from approximately six feet away, causing her to sustain bruising

and soreness. (Id. at ¶¶ 158-63.)

II. Discussion

A class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." Comcast Corp. v. Behrend, 569 U.S. 27, 33 (2013) (citation omitted). "To come within the exception, a party seeking to maintain a class action 'must affirmatively demonstrate his compliance' with [Federal] Rule [of Civil Procedure] 23." Id. (quoting Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011)). Consequently, a class action will be certified only if it meets the four prerequisites identified in Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Fed. R. Civ. P. 23(a). If these requirements are met, the action must also fit within one of the three subdivisions of Rule 23(b). See id. at 23(b). Here, plaintiffs seek certification under Rule 23(b)(3), which requires both (a) "that the questions of law or fact common to class members predominate over any questions affecting only individual members," and (b) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Id. at 23(b)(3).

"Rule 23 does not set forth a mere pleading standard." Wal-Mart Stores, 564 U.S. at 350. "[C]ertification is proper only if the trial court is satisfied, after a rigorous analysis," that the necessary prerequisites have been satisfied. Id. at 350-51 (citations and internal quotation marks omitted). The court may consider the merits of plaintiffs' underlying claims only to the extent they are relevant to determining whether the

prerequisites for class certification are satisfied. Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 466 (2013) (citation omitted).

In opposing class certification, defendants argue that numerosity, predominance, and superiority are not satisfied; they do not appear to challenge commonality, typicality, or adequacy of representation. (See Opp. (Docket No. 16).)

A. Predominance

The court agrees that the predominance requirement, which plaintiffs are required to establish when seeking certification under Rule 23(b)(3), is not satisfied in this case. "The predominance inquiry focuses on the relationship between the common and individual issues and tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Senne v. Kansas City Royals Baseball Corp., 934 F.3d 918, 927 (9th Cir. 2019) (citation and internal quotation marks omitted). The requirement "ensures that 'common questions present a significant aspect of the case' such that 'there is clear justification' -- in terms of efficiency and judicial economy -- for resolving those questions in a single adjudication." Romero v. Securus Techs., Inc., 331 F.R.D. 391, 410 (S.D. Cal. 2018) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998)).

"In determining whether the predominance requirement is met, courts have a 'duty to take a close look at whether common questions predominate over individual ones' to ensure that individual questions do not 'overwhelm questions common to the class.'" Senne, 934 F.3d at 927 (quoting Comcast Corp., 569 U.S.

at 34). In other words, it "requires courts to ask 'whether the common, aggregation-enabling issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" Id. at 938 (quoting Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453 (2016)).

Here, plaintiffs -- the proposed class representatives -- note that they seek class certification only as to class-wide claims alleging municipal liability against the City, rather than for their individual claims alleging, inter alia, excessive force and retaliation against them by individual defendant officers. (See Mot. at 15; Reply at 4 (Docket No. 17); FAC at ¶¶ 196-97, 202-03, 208-09, 214-15, 221-22, 228-29, 234-35, 241-42, 248-49, 255-56, 262-69, 271-72, 278-79, 285-86, 292-93 (delineating individual claims alleging violation of constitutional, statutory, and common law rights, and separately asserting class-wide claims alleging municipal policies caused those alleged violations).)

Accordingly, the court evaluates whether issues pertaining to the municipal liability claims that are alleged to be common to all putative class members, such as the existence of a municipal policy or custom that caused the alleged violations of plaintiffs' and other putative class members' civil rights, predominate over individual questions that must be resolved when determining the existence of municipal liability. See Senne, 934 F.3d at 927, 938; (Mot. at 12). In other words, even if there indeed are issues common to all putative class members, such that those issues may be resolved uniformly on a class-wide basis, predominance will not be satisfied if the significance and number

of those issues is substantially outweighed by the significance and number of other issues requiring individualized proof.

Because § 1983 does not provide for vicarious liability, a local government "may not be sued under § 1983 for an injury inflicted solely by its employees or agents." Monell v. Dept. of Soc. Servs. of the City of N.Y., 436 U.S. 658, 694 (1978). "Liability may attach to a municipality only where the municipality itself causes the constitutional violation through 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'" Ulrich v. City & Cnty. of San Francisco, 308 F.3d 968, 984 (9th Cir. 2002) (quoting Monell, 436 U.S. at 694).

That particular challenged acts "may be fairly said to represent official policy," thereby demonstrating the existence of a § 1983 claim for municipal liability, may be shown in multiple ways relevant to plaintiffs' claims: (1) identifying an express policy, see Monell, 436 U.S. at 690; (2) "prov[ing] the existence of a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law," City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (plurality opinion) (citation and internal quotation marks omitted); (3) showing that a subordinate officer's unconstitutional decision was "subject to review by the municipality's authorized policymakers" who "approve[d] [the] subordinate's decision and the basis for it," id.; and (4) demonstrating that the municipality failed to adequately

train employees so as to avoid the constitutional violations that allegedly occurred, see City of Canton v. Harris, 489 U.S. 378, 388 (1989). (See FAC at ¶¶ 165-178, 192-93, 197, 203, 209, 215, 222, 229, 235, 242, 249, 256, 263, 265, 267, 269, 272, 279, 286, 293 (alleging existence of municipal policies based on these four theories).)

Regardless of the form a "policy" takes for purposes of municipal liability, it must also be a legal cause of the injury or injuries of which a plaintiff complains. See Harris, 489 U.S. at 385 (municipal liability requires "a direct causal link between a municipal policy or custom and the alleged constitutional deprivation"); id. at 389 ("[A] municipality can be liable under § 1983 only where its policies are the 'moving force behind the constitutional violation.'") (quoting Monell, 436 U.S. at 694) (alterations adopted); Monell, 436 U.S. at 694 (municipal liability exists only "when execution of a government's policy or custom . . . inflicts the injury"); see also Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 397, 405 (1997) ("Where a plaintiff claims that the municipality has not directly inflicted an injury, but nonetheless has caused an employee to do so, rigorous standards of . . . causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee.") (citations omitted).

Plaintiffs contend that their class-wide claims for municipal liability depend on common showings such as "the legality of the use of 'less-lethal' impact weapons against protesting demonstrators, and the existence of a policy or custom permitting the practice." (Mot. at 15.) Based on these asserted

points of commonality, they contend that predominance is satisfied because "the elements of Plaintiffs' [municipal liability] claim rely on proof involving Defendants' policies and practices, and will not require facts individual to each class member's claims." (Id. (citation omitted, alterations adopted).)

However, as explained, to establish municipal liability, plaintiffs, as proposed class representatives, are required not only to identify and prove the existence of a challenged policy, but also to demonstrate that each class member's rights were in fact violated and that the challenged policy (or implementation thereof) was the cause of those violations. See Harris, 489 U.S. at 385, 389; Monell, 436 U.S. at 694. The latter inquiries are necessarily individual. Assuming the existence of one or more of the challenged policies were established, to determine liability the court would then be required to consider what particular injury a given class member suffered, whether that injury amounted to a deprivation of that individual's rights, and whether the injury was actually caused by one or more challenged policy and did not have some other, independent cause.

For example, one asserted policy challenged by plaintiffs allegedly "authorizes officers to use force against non-threatening demonstrations," providing that "[i]f a display of officers accompanied by a dispersal order does not result in voluntary dispersal, more forceful action may be employed." (FAC at ¶ 167.) However, whether such a policy was the cause of a given class member's injuries would require an individualized determination of the particular circumstances faced by the

officer who used force against that individual, including the individual's conduct -- for example, whether a dispersal order had in fact been given, and if so, whether the class member had complied with that order. If one class member failed to disperse after an order was issued, an injury he or she subsequently sustained might be attributable to the policy, whereas if a second class member did disperse and was nonetheless injured, such injury would not be attributable to the policy by the policy's own terms, which require a failure to disperse. Similarly, although plaintiffs allege the policy authorizes the use of force against "non-threatening demonstrations," whether the policy caused a given class member's injury would require a particularized determination of whether that individual, and/or other demonstrators surrounding him or her, engaged in conduct that might be considered threatening.[2]

Plaintiffs likewise allege that the City and the Department "maintain an unofficial custom whereby their officers are permitted to employ unconstitutional tactics against persons in or around the area of a demonstration/protest -- particularly as it relates to demonstrations/protests concerning the subject

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[2] The result might be different if, for example, plaintiffs alleged that the City maintained a policy affirmatively requiring officers to shoot less-lethal weapons into crowds indiscriminately whenever responding to protests. The existence of such a policy would tend to negate many of the individualized inquiries the court has identified, since it would indicate that officers shot a given class member simply because that individual was part of a crowd during a protest and not because of any threat he or she appeared to pose to officers or others under the circumstances. Here, however, plaintiffs have not identified a policy that would foreclose the need for individualized inquiries into causation in that way.

of police violence." (FAC at ¶ 170.) Other than establishing the existence of this alleged custom, proving liability here would again involve individualized considerations: Plaintiffs would be required to show that unconstitutional tactics were indeed employed, and each class member would be required to demonstrate that they were subject to police violence because of those tactics -- rather than because of other, constitutionally compliant crowd control methods that may have been employed at the particular protest they attended, or because of threatening conduct by that particular individual.

As the factual allegations recited at the outset of this Order show, however, the proposed class representatives were present at or near protests at different times, at different locations, and in different capacities. They each appear to allege that different officers caused their injuries. (Compare FAC at ¶¶ 26-69 (alleging plaintiff Garza was shot by one or more of defendants Does 1 through 25), with id. at ¶¶ 79-84 (alleging plaintiff Ruiz was shot by one or more of defendants Does 26 through 50).) Each suffered different injuries from one another under different circumstances, after engaging in different conduct from one another. And plaintiffs have not suggested or provided the court with any reason to believe that these and other disparities would not exist between most or all members of the putative class, which plaintiffs contend consists of over one hundred individuals. (See Mot. at 11; Reply at 2-3.)

Thus, even if the alleged policies were established on a class-wide basis, to determine the existence of municipal liability based on those policies the court would in effect be

required to conduct a "mini-trial" for each class member evaluating complex and fact-intensive issues of causation and injury based on the fourteen constitutional, statutory, and common law claims that form asserted bases for municipal liability. (See FAC at ¶¶ 194-296); Patel v. Facebook, Inc., 932 F.3d 1264, 1275-76 (9th Cir. 2019) (acknowledging that need for numerous "mini-trials" on individual issues may defeat predominance); United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. ConocoPhillips Co., 593 F.3d 802, 809 (9th Cir. 2010) (same) (citation omitted).[3]

Because the "non-common, aggregation-defeating, individual issues" inherent in plaintiffs' municipal claims are therefore "more prevalent . . . than the common, aggregation-enabling issues" in the case, the court concludes that, were it to certify the proposed class, these "individual questions [would] overwhelm questions common to the class." Senne, 934 F.3d at 927, 938 (citations and internal quotation marks omitted). Plaintiffs have therefore failed to show "that the

[3] Moreover, the class proposed by plaintiffs is defined to include not only individuals shot with less-lethal weapons by Sacramento police officers, but also those shot with such weapons by "mutual aid partners" from jurisdictions other than the City. (See Mot. at 10.) The policies plaintiffs identify, however, are City policies, which would be inapplicable to officers from other jurisdictions unless those jurisdictions maintain identical policies, which plaintiffs have not alleged is the case. This introduces additional individualized considerations, since to determine municipal liability based on a given class member's injuries the court would need to determine that the shooting officer was in fact a Sacramento police officer and not a mutual aid partner bound by another jurisdiction's policies.

questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). The court will therefore deny plaintiffs' motion for class certification.[4]

IT IS THEREFORE ORDERED that plaintiffs' Motion for Class Certification (Docket No. 13-1) be, and the same hereby is, DENIED.

Dated: July 14, 2022

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

[4] Because the predominance inquiry is dispositive, the court does not consider the other relevant factors under Rule 23(a) and Rule 23(b)(3).